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JAMES H. McKENNE

By. of Mansfield for P. C.

SUPREME COURT OF THE UNITED STATES.

Filed Jan. 7, 1901.

The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF FOR PLAINTIFF IN ERROR.

FREDERICK LEE MANSFIELD,
ATTORNEY.

OGDEN BRO'S & CO., PRINTERS, KNOXVILLE, TENN.

Supreme Court of the United States.

The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

Brief and Assignments of Error for Plaintiff in Error.

This action originated before a magistrate in Rhea County, Tennessee, and by appeal was taken successively to the Circuit Court of Rhea County, and to the Supreme Court of Tennessee, the latter forum being the Court of highest resort in Tennessee.

The record in this Court presents the sole question of the constitutionality of Chapter 11, House Bill No. 210, of the Acts of the Legislature of Tennessee, passed March 17th, 1899.

This Act is as follows:

"AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employees for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employees, laborers, or a *bona fide* holder, and to provide a legal remedy for collecting the same in favor of said laborers, employees and such *bona fide* holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or

other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employee or *bona fide* holder, in lawful money of the United States; *Provided*, The same is presented and redemption demanded of such person, firm, corporation or company using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemption demanded as aforesaid by such laborers, employees, or *bona fide* holder at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employees, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; *Provided*, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Sec. 2. Be it further enacted, That any employee, laborer or *bona fide* holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in Section 1 of this Act.

"Sec. 3. Be it further enacted, That nothing herein in this Act contained is to be construed as to legalize the issuance or use of scrip. That all laws in conflict with this Act be and the same are hereby repealed.

"Sec. 4. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

"Passed March 17, 1899.

"Signed," Etc.

It was insisted in the State Courts that this Act was unconstitutional, and its validity was drawn in question by the plaintiff in error, on the grounds that it was repugnant to the 14th Amendment to the Constitution of the United States.

It appears from the undisputed facts that the company

is a corporation organized under the laws of the United Kingdom of Great Britain and Ireland, and is engaged in the manufacture of pig iron, the mining of coal and the making of coke, and in the conduct of its business employs a force of about six hundred laborers. The company owns and runs a store, where it sells goods to its employees and such other persons as desire to purchase. The company also has a monthly pay day, which is about the 20th of the month, and settles in cash with its employees on said pay-day. In the meantime, and to such of its employees as see fit to request the same, it issues punchout in denominations of from $1.00 to $5.00. The plaintiff below purchased several of these orders, all of which are similar, except the name of the payee, and the following is a copy of one of said orders:

(FACE.)

25	25	25	25	10	10	10	10	10

April, 1899.

$2.

No. L. C. 15.

Not transferable.

Good for all amounts unpunched.

The storekeeper will supply goods to the amount of this order to Geo. Holston, in account with Dayton Coal & Iron Co., Limited.

G. C. McKENZIE, Cashier.

5	5	5	5	5	5	5	5	5	5

(BACK.)

5	5	5	5	5	5	5	5	5	5

This order is not transferable, and can be used only by the party in whose favor it is made.

25	25	25	25	10	10	10	10	10

It will be seen by this order or punchout that the company gives an order to its storekeeper for goods,

and that this order is in terms not transferable and is for use only by the party in whose favor it is drawn. It thus appears that there is a contract made and entered into by and with the company on the part of the person receiving and accepting the order, and that the order is only redeemable in merchandise in the hands of the original holder. This is an express contract made by the parties. There is no pretense made in the record that there is any discrimination against the holder of the punchout, or that the purchasing power of the order in the company's store is less than an equal amount of lawful money of the United States, nor is there a scintilla of evidence showing that there is any compulsion on the part of the company requiring employees during the month to take out punchout at all or in any amount, or that their positions are imperiled in case they fail to take it out; but it appears from the record that this is done for the mutual benefit of the company and its workmen.

While this case involves only $50.00 it is a test case of much importance and of vital interest to the industrial establishments of the State of Tennessee, and thousands of men employed therein. It is not practical for a concern of this kind to pay weekly, and it is customary for such concerns to pay monthly.

It is a well known fact that many of the employees, and in fact a majority of the employees of mining and furnace companies are poor people, and many of them often shiftless, and it is therefore necessary that some advancements be made them from time to time to supply the men with necessary food and clothing. The class of labor employed by industries of this kind is also by nature roving, if the men were paid off at short intervals the company would oftentimes be deprived of their services, through their desire to wander, and it is

also a matter of considerable labor and expense to keep the time and make out the pay-roll for such a large number of men at frequent intervals, therefore it is to the company's interest to pay monthly, and on the other hand, if the men are supplied with such goods as are necessary for their well-being, it is to their advantage that they are enabled to receive the same, and the company, as a matter of course, makes or expects to make a reasonable profit on the goods, therefore, it is for the mutual benefit of employer and employee.

We earnestly insist that the Act in question is obnoxous to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which says no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law.

Many Acts of this character have been passed in the industrial States, having, as we insist, for their object the political advancement of the author of the Act, and not the welfare particularly of the persons nominally sought to be benefitted. In other words, such Acts are attempts largely to curry favor with the labor vote.

Most of these Acts have failed in the State Courts of their respective States, and we know of no case which has reached this Court, which must be the final arbitrator of such legislation.

The decision of the Supreme Court of Tennessee was in favor of the validity of the Act.

ASSIGNMENTS OF ERROR.

1st. The Supreme Court of Tennessee erred in ordering, adjudging and decreeing that the statutes of the State of Tennessee constituting Chapter 11 of the

Acts of 1899, under which the defendant in error claimed a money recovery against the plaintiff in error, was not repugnant to the 14th amendment to the constitution of the United States, and was in all things valid, and in ordering and decreeing in favor of the defendant in error and against the plaintiff in error, for the sum of $51.81, and all the cost of the cause.

2nd. The State Court erred in that the validity of the aforesaid statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error, on the ground that it deprived the plaintiff in error of its liberty and property without due process of law, and was repugnant to Section 1 of the 14th amendment to the constitution of the United States. The decision of the Court was in favor of the validity of said statute, and the aforesaid decree was rendered by said Court, under the provisions of said statute, in favor of the defendant in error and against the plaintiff in error.

3rd. The State Court erred in that the validity of the aforesaid statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error, on the ground that it abridged the privileges and immunities of citizens of the United States, and was repugnant to Section 1 of the 14th amendment to the constitution of the United States, the decision of said Court was in favor of said statute, and the aforesaid decree was rendered by said Court, under the provisions of said statute, in favor of the defendant in error and against the plaintiff in error.

BRIEF.

The above assignments of error practically raise the same questions and may be considered as one.

This cause fairly and squarely presents the question

as to whether the Act of the Legislature of Tennessee is obnoxious to said 14th amendment, and therefore void. There is perhaps no question that has involved so much study and discussion as the construction of Section 1 of the 14th amendment to the constitution, and while no case involving this direct question has been passed on by this Court, there are many cases that are instructive and persuasive.

In the case of *Leep vs. St. Louis, Iron Mountain and Southern Railway Co.*, a question was presented as follows: Leep was employed to work for the defendant at a monthly rate, and before the expiration of the month was discharged. On the day of his discharge he demanded his wages at the contract rate, which the company refused to pay then, but agreed to pay at their regular pay-day, and thereupon suit was brought. It appears that the legislature of Arkansas had passed an act in substance providing that on the discharge of any employee working for any company, corporation or person engaged in operating or constructing any railroad or railroad bridge, his wages should then become due on the day of his discharge, and providing for a penalty for their non-payment, and providing that suit might be brought. A very learned discussion of the question is found in this case. It was held that the act in question was unconstitutional, null and void as against natural persons, but was constitutional as against the corporation sued, because it was a corporation, and there was reserved in the charter a power of amendment, and the legislation in question was an exercise of that power.

Leep vs. St. L., I. M. & S. R'y Co., 41 Am. St. Rep., 109.

We call this Court's attention to the fact that there is no power to amend the charter of appellant. The

act does not purport on its face to be an amendment of said charter, and if said act was such amendment, then the act would not apply to laborers employed by individuals and would apply to laborers employed by corporations, and would be void under the constitutional provisions of Tennessee prohibiting class legislation.

It is a well known principle underlying all English and American legislation, secured in the bill of rights and set out in the Declaration of Independence, that all men are created free and equal and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and property, of acquiring and possessing property, and protecting property and reputation, and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; but in order to secure these rights from invasion by caprice, by passion, and by prejudice, it is necessary that there shall be a government of law and not a government of men, and it is necessary that rights and privileges shall be secured to the citizen without abridgement from inconsiderate legislation, oftentimes fastened upon the body politic by designing and unscrupulous politicians, and it was for that purpose that the constitutional provision aforesaid was enacted. It has been said, and truly, that of all the rights of persons the one most essential to human happiness is the right to acquire and possess property, and this right necessarily includes the right to contract, for it is the principal mode of acquisition and is the only way by which a person can rightly acquire property by his own exertion. We concede that the right to contract is not unlimited. Duties to persons, to society, to the government are imposed upon every individual. Every man undertakes to perform these

duties, and necessarily surrenders some rights on account of his relation to others. He submits himself to such restraints and burdens as may conduce to the general comfort, health and prosperity of the State. His enjoyment of his property and his right to contract is subject to the police power of the State. It is subject, where the duties exercised are of a public nature, to regulation by the State within legal and proper limits; as, for instance, the legislature can fix the maximum of charges in public warehouses and for carriage of freight and passengers by common carriers, and it can regulate millers, bakers, innkeepers, because such property, being devoted to the public use, the public has an interest therein. But even that power of legislation is not unlimited. Common carriers and telegraph companies cannot lawfully stipulate for exemption from responsibility for negligence of themselves or their servants. But would any one insist that the State may say a common carrier shall only employ men of a certain height, or weight, or age, or that they should only pay a certain sum as wages? The State is not a paternal institution, regulating the affairs of its citizens as a father regulates the conduct of his child. There must be general principles, and the question is whether the Tennessee act quoted is an infringment of the inalienable right of citizens of the United States to contract.

By examination of every well considered case it will be seen that the power of the legislature imposing conditions on contracts, or limiting the right to contract, or avoiding contracts made, is based in every case on some particular condition, and not on the absolute right to control. It is obvious that the right to contract cannot be limited by arbitrary legislation which rests upon no reason upon which it can be defended, for if it could the right would cease to exist and would become a

license revokable at the will of the legislature, and the Government would become a despotism in theory and probably in fact. Such a power cannot exist, for if it could it would be subversive of the right to enjoy and defend, to acquire and possess property, and to pursue happiness, declared to be inalienable by the Constitution of the United States.

When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to persons or society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.

The legislature of Missouri made it unlawful for any corporation, person or firm engaged in manufacturing or mining, to issue for the payment of wages any check or other token of indebtedness payable otherwise than in lawful money unless the same is negotiable and redeemable at its face value in cash or in goods, at the option of the holder, at the store or other place of business of the corporation, firm, or person, provided that the order, check, memorandum, person, or other evidence of indebtedness so issued should upon presentation and demand within thirty days from date of delivery thereof be redeemed by the person or corporation issuing the same, in goods at the current cash market price for like goods or lawful money, as may be demanded by the holder. It was held by the Supreme Court of Missouri that the statute was unconstitutional.

State vs. Loomis, 115 Mo., 307.

The Legislature of Texas passed an Act that in the event a railroad company refused, under certain circumstances, to pay the indebtedness to the employee within fifteen days after demand it should be liable, in

addition to the amount due, for 20 per cent. penalty. This Act was held to be unconstitutional because it was confined to railroads; but the Supreme Court of Texas also laid down the doctrine that the relation of railroad companies to their servants, as to acts of employment and payment, was a field in which special legislation had no right to enter.

San Ant. R'y Co. vs. Wilson, 19 S. W. Rep., 910.

It is also laid down in hundreds of cases that the Legislature cannot regulate or restrain the rights of individuals to contract, by making it unlawful for them to agree with each other that wages shall be paid at any specific time subsequent to the day on which the labor by which they are earned be completed, or that the price of property sold shall be paid on a day subsequent to the sale. Such a contract, as to the time of performance, is necessarily harmless and purely and exclusively private concern, and can affect no one except the parties. It is an important means used in the acquisition of property, which sells for more on time than for cash. Labor commands higher wages when payable in the future than it does when paid at the time of performance. A large proportion of the business of the world is transacted on a credit. Nations, states, counties, towns, and persons contract debts payable in the future. The right of persons to sell and labor on a credit is everywhere and by all recognized as legitimate, and is protected by the Constitution in the declaration that the right to acquire and possess property is inalienable.

The Legislature of Illinois, which State has a constitution very similar to that of Tennessee, passed an Act requiring that every manufacturing, mining, quarrying, lumbering, mercantile, street, electric, and elevated railway, steamboat, telegraph, telephone and municipal

corporation, and every incorporated express company and water company, shall pay weekly each and every employee engaged in its business, and providing the penalty for non-payment, and made a violation of the statute a misdemeanor, and furthermore forbidding any of the parties named in the Act from requiring its employees to accept wages at other periods. One McGrew entered into a contract with the Braceville Coal Co., in which it was stipulated that he should be paid only on the regular pay-day, which should be the first Saturday after the 10th day of each month. He entered the company's employment November 3rd, and quit before pay-day and demanded his wages, and the company was indicted for a violation of the statute. Held that the statute was unconstitutional.

Braceville Coal Co. vs. People, 37 Am. St. Rep. 306.

Said the Supreme Court of Illinois: "Property in its broader sense is not the physical thing which may be the subject of ownership, but is the right of dominion, possession, and the power of disposition, which may be acquired every day, and the right of property preserved by the constitution is the right not only to possess and enjoy it, but the right to acquire it in any lawful mode or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed him, chooses to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is a common heritage, and, as an incident to the right to acquire other property, the liberty to enter into other contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty."

In Frorer vs. People, 141 Ill., 171, the Supreme Court of Illinois says: "The privilege of contracting

is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."

It is undoubtedly true that the people, in their respective capacity, may, by a general law, render that unlawful which, in many cases, had hitherto been lawful, but laws depriving particular persons or classes of persons of rights enjoyed by the community at large to be valid must be passed upon some existing distinction or reason not applicable to others not included within its provisions.

Cooley's Constitutional Limitations, 391.

The legislature of West Virginia passed an act providing that all persons, firms, corporations, or associations engaged in mining coal, ore or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employees as provided in the Act—that is to say, it was rendered unlawful for them to issue for the payment of labor any order or other paper whatsoever unless the same purports to be redeemable for its face value in lawful money of the United States, bearing interest at the legal rate, and made payable to the employee or bearer and redeemable within the period of thirty days, providing that a violation of the Act was a misdemeanor and fixing the penalty. One Goodwell was indicted for a violation of the Act, and the Act was held to be unconstitutional by the Supreme Court of West Virginia in the case of the State vs Goodwell, 25 Amer. St. Rep. 863, which is one of the leading cases of this

kind in the United States, and the question in the case was by the Supreme Court of West Virginia said to be whether under the 14th amendment to the constitution of the United States the legislature could limit or forbid the right to contract between parties not under mental, corporeal, or other disability, when the subject of the contract is lawful, not public in its character, and the exercise of it is purely private and personal to the parties themselves. It was further held that liberty as used in the Constitution,is not dwarfed into mere freedom from physical restraint or incarceration, but is deemed to embrace the right to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to the restraint necessary for the common welfare. "Liberty," said the Court, "in its broad sense, means the right not only to use our freedom from servitude, imprisonment, or restraint, but the right to use our faculties in all lawful ways, to live and work where we please, to earn our livelihood in any lawful calling, to pursue any lawful trade or vocation" * * * * "The right of every individual must stand or fall by the same rules of law that govern every other member of the body politic under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens, and not of others, when there is no public necessity for such discrimination, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, and the mass of the community, and those who make the law, by another." Nor is this principle changed, as we insist, by the fact that the Tennessee law purports to apply to all persons employing labor. Labor is an asset and property that is purchased, and the law that

compels the employer of labor to pay only money for labor is a discrimination in favor of the person that buys other property and pays for it in other ways than by money.

The vocation of the employer, as well as that of his employee, is his property. Depriving the owner of property, or one of its attributes, is depriving him of his property under the provisions of the constitution.

People vs. Otis, 90 N. Y., 48.

The right to use, buy and sell property and contract in respect thereto, including contracts for labor, which is, as we have seen, property, is protected by the constitution. If the legislature, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to the lawful trade or business, then it may prevent the prosecution of all trade and regulate all contracts.

State vs. Goodwell, 25 Am. St. Rep., 867.

And in the same case the Supreme Court of West Virginia said that while corporations engaged in occupations in which the public had an interest or use might within certain well-defined limits be regulated, as for instance, regulating the charges of railroad and telegraph companies, yet they knew of no well-considered case in which a statue has been upheld that undertook to regulate the dealings between employer and employees, even in this class of occupations, much less in cases that are not impressed with public trust or duty.

The claim is made that this class of legislation is sustainable in the exercise of the police power which every sovereign State possesses. That power is very broad and comprehensive, and is exercised to promote the health, safety and welfare of society. Its limits cannot be defined accurately. No Court, as far as we

can ascertain, has been willing to attempt definitely to circumscribe it. But this power, though broad and extensive, is not above the Constitution, and if the Legislature passes an Act ostensibly for the public health, safety, or welfare, and thereby destroys or takes away the property of a citizen and interferes with his rights or personal liberty, then it is for the Court to decide whether it is a proper and reasonable exercise of the power, and if it is not, to declare it void.

Such legislation as the legislation in question partakes of the nature of despotism. The Supreme Court of New York, *in re* Jacobs, 98 N. Y., 114, 50 Am. Rep., 636, said: "Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution, while far removed in time, we shall not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people and a large range of other affairs long since, in all civilized lands, regarded as outside of governmental functions. Such governmental interference disturbed the finer adjustments of the social fabric and usually deranged the delicate and complicated machinery and caused a score of evils while attempting the removal of one."

The legislation declared unconstitutional in the New York case just cited was an act for the alleged purpose of improving the public health, and prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement-houses. This cause contains some very useful and pertinent discussion of the con-

stitutional provisions now under discussion, a few of which we cite:

"The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions without any control or dominion save only by the law of the land." * * * "There may be such serious interruptions to the common and necessary use of property as will be equivalent to a taking within the meaning of the Constitution. When the law annihilates the value of property and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the constitutional provisions intended expressly to shield personal rights from the exercise of arbit ary powers." * * * "All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specific locality or exclude him from his own house, or restrain his otherwise lawful movements, except as such laws may be passed in the exercise, by the Legislature, of the police power, which will be noticed later, are infringements on his fundamental rights of liberty, which, under the Constitution, are protected." Speaking of police power, the Court said: "The limit to the exercise of the police power can only be this: The Legislature must have reference to the comfort, or safety, or welfare of society. It must not be in conflict with the provisions of the Constitution." "Law will not allow the rights of property to be invaded under the guise of police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation." * * * "All sorts of restrictions and burdens are imposed under the police power, and when these

are not in conflict with any constitutional prohibition of fundamental principles they cannot be successfully assailed in a judicial tribunal, but, under the pretense of prescribing a police regulation, the State cannot be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to be secure against abridgement."

In the case of the State vs. Fire Creek Coal & Coke Co., 33 W. Va., 188, found in American State Reports, 891, a West Virginia Act was declared unconstitutional which declared it unlawful for any person, firm or corporation engaged in mining or manufacturing, and interested in merchandising, to knowingly sell to any employee merchandise at a greater per cent. of profit than when selling to other customers buying like quantities for cash. This was decided to be an unjust interference with the rights, privileges and property of both employer and employee. It was held that the remedy was in the hands of the employee; that he is not compelled to buy from his employer, and if he does it is an injust interference of the rights of both, and places upon both a badge of slavery by denying to one the right to manage his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself or manage his own private affairs. Said the Supreme Court of West Virginia: "The statute is a procrustean bed. It consigns all ages and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade and all considerations of mutual benefit, and even charity. If the employer sells goods to the family of some friend in indigent circumstances at less than cost, then, under the statute, he must sell at the same price to all of his employees; but it is unnecessary to illustrate the vices, the crudities and the

injustice of the statute. That it is an attempt to do for private citizens, under no physical or moral disabilities, what they can best do for themselves, is apparent. It selects miners and manufacturers as a class and denies to them privileges which are not only proper and legitimate in themselves, but also to some extent necessary and unavoidable in the conduct of business, privileges which concern private affairs solely, and which are enjoyed by all other classes of citizens. It is an attempt on the part of the Legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The Act is an infringment alike of the rights of the employer and the employee. More than this, it is an insulting attempt to put the laborer under legislative tutelage, which is not only degrading to his manhood, but subversive to his rights as a citizen of the United States.

To the same effect see Godcharles vs. Widesman, 113 Pa. St. Rep., 431.

The legislature of Massachusetts passed an Act providing that no employer should impose a fine upon or withhold the wages or any part of the wages of an employee engaged at weaving, for imperfections that may arise during the process of weaving, and providing for the imposition of a fine for the violation of the statute. It was held by the Supreme Court of Massachusetts, in the case of Commonwealth vs. Perry, 31 Am. St. Rep., that notwithstanding the fact that said Act did not preclude the employer from bringing a suit for damages against the employee, the statute was unconstitutional, null and void. Said the Supreme Court of Massachusetts: "The right to employ weavers and to make proper contracts with them is therefore protected by our Constitution, and the statute which for-

bids the making of such contracts, or attempts to nullify them or impair the obligation of them, violates the fundamental principles of rights which are expressly recognized in our Constitution." It was held in that case that the statute was a violation of both the Federal and State constitutions.

The legislature of New York passed an Act in substance making it a misdemeanor to sell or dispose of anything other than what is specifically stated to be the subject of sale or exchange, is to be delivered or received, or in any way connected with it as a part of the transaction, as a gift, prize, premium or reward to the purchaser. A tea company in the transaction of its customary business, offered some crockery and glassware as a gift in connection with the sale of a certain amount of merchandise, and in passing upon the case it was held by the New York Court of Appeals that the act was unconstitutional, null, and void.

People vs. Gillman, 4 Am. St. Rep., 465.

In the above case the holding was that the statute was void under a clause of the constitution of New York almost similar to the clause of the Federal Constitution herein mentioned, and identical in meaning; and it was held that the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or vocation, is protected by the constitution of the fundamental principles of our judicature. In that case the New York Court said that this legislation was of a kind becoming very frequent of late, and was meant to protect some class in a community against the fair, full, and free competition of some other class, some members of the former class thinking it impossible to hold their own against such competition. Now, it is evident that the Tennessee act was

aimed at corporations engaged in large mining and manufacturing pursuits, and not at the farmer employing one or two laborers, but the sweeping provision was placed in the act to protect it from the ban of class legislation, and while an act is construed by its four corners, and the motive and policy of the legislature cannot be criticised, yet the purpose of the act—that is, its real purpose—can be looked to in determining whether or not the act is a legitimate exercise of the police power. Now, under the Tennessee statute the employer is prohibited from contracting with his employee as to the mode and manner of payment. The employee is likewise prohibited from contracting with his employer as to manner and mode of payment. If the necessities of life compel the laborer to have an advance upon his wages, the employer is prohibited from making a contract regarding such advance, notwithstanding that the contract is advantageous to both parties.

In the New York case it was held that the statute prohibited a man owning articles of food to sell or dispose of them in such manner as he deemed fit. He was selling a lawful article, a necessary of life; his manner of sale, while it reduced the profits on the particular sale, was by him deemed to increase the volume and amount of his trade and in the end increase his profits; the purchaser was pleased at the prospects of getting a bonus in his purchase; neither party was engaged in a business intrinsically or inherently unlawful or immoral. The statute was nothing else than an invasion of the liberty of the person—such invasion of the liberty of the person as our forefathers went to war to protest against, and to prevent which nations have spent millions of blood and treasure. There is no more difference in the principle of the two statutes—that is the

New York and the Tennessee statutes—as far as the principle goes and the liberties are concerned, than there was in the acts of the British government that resulted in the revolution and its invasion of our liberty.

The fact that the laborer can or cannot work the entire month without receiving an advance on his wages does not alter the case. His fundamental and valuable rights are invaded, weakened, limited, and destroyed by the legislation under consideration.

The New York Court of Appeals in the last above cited case, discussing police power, says that it is true that generally it is for the legislature to determine what laws and regulations are needed to protect the public health and conserve the public comfort and safety, but these measures must have some relation to the ends: "The Court must be able to see upon a perusal of the enactment that there is some just and reasonable connection between it and the ends above mentioned, and that, unless such relation exists, the enactment cannot be upheld as an exercise of the police power."

To follow this reasoning further, a laborer in Tennessee, working for his employer, accepts an order on the store and is charged on the books of the company with the amount of the order. At pay-day the company owes him only the balance due on his wages after the order is charged. Yet this act says that notwithstanding he agreed to take so much of his wages voluntarily in goods, and notwithstanding the fact that the purchasing power of his order is equal to an equivalent in cash, and notwithstanding that the laborer has traded his order to some other person, perhaps a rival merchant for goods, that the company issuing the order is bound to redeem it in cash, in plain violation of a specific contract made between parties *sui juris*, under

no legal disability and presumably in every way capable of taking care of themselves.

The Pennsylvania courts have given statutes of this class much attention, and as much as Pennsylvania has more laborers than any other State in the Union, constituting a large voting class, whose alleged interests the political legislator is anxious to protect, many of these acts have been passed. One was declared unconstitutional in the case of Godcharles vs. Widesman, 113 Penn., 431. In that case an act was passed declaring void all orders given by employers engaged in the business of manufacturing to their workmen, payable in goods. The Supreme Court of Pennsylvania said, speaking of certain sections of the act, being the sections above referred to, "They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringment alike upon the rights of employer and employee. The employee may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and every law that undertakes to prevent him from so doing is an infringment upon his constitutional privileges, and therefore vicious and void."

Another Pennsylvania Act required monthly payment of wages, and was declared unconstitutional inasmuch as it amounted to making a contract between the parties against their will, and it was held that the Act could not mature the payment of wages before the time agreed upon by the parties.

Bauer vs. Reynolds, 3 Penn. Dist. Rep., 502.

Another Pennsylvania Act, which provided that the wages of miners should be paid in lawful money of

the United States, was held unconstitutional, so far as it attempted to preclude miners from making valid contracts to accept other than money in payment of their wages.

Showalter vs. Ehlan, 5 Pa. Sup. Ct., 242.

A Missouri Act was declared unconstitutional by the Supreme Court of Missouri, which provided that it should be unlawful for any person, firm or corporation engaged in manufacturing or mining to pay out or circulate for the payment of wages of any laborer any order, check, or memorandum, unless the same was payable in lawful money of the United States.

The principle underlying the case at bar was enunciated and approved by the Supreme Court of Tennessee in the case of Bank vs. Vivine Grocery Co., 13 Pick., 609, in treating of the unconstitutionality of Chapter 129 of the Acts of 1895, the effect of the second section of the Act being to prevent any person being in debt from selling or disposing of his property except for cash, and providing a remedy in case of violation of the Act. Said the Supreme Court of Tennessee: "It is, and correctly, insisted that while this act does not deprive him directly of his property, it takes away from him that element of its value which consists in the right to use and legitimately dispose of it, and here it must not be forgotten that we are not dealing with the question of the insolvent debtor conveying his property, or any part of it, or of the solvent debtor conveying his property, or any part of it, for the purpose of hindering, delaying or defeating creditors, for the Act does not stop with the declaration that such disposition, if made for the purpose of preferring one or more creditors, shall be void, but adds that where it has that effect it shall be void, and as any transfer of any part of the property of the debtor, however

solvent, to a creditor—a preference to that extent, it is manifest that this is a limitation upon the right for a proper purpose by a solvent debtor to convey any part of his property at all, if in so doing he shall satisfy any of his debts. It was decided in the case of Stratton Claimants vs. Norris Claimants, 89 Tenn. Rep., 497, that when the Constitution of the State of Tennessee was formed, the right to own and hold, to enjoy, to alien, to devise, and to transmit property by inheritance was enjoyed to the fullest extent and perfection of absolute right, and one of the objects of the Constitution was to protect and preserve this right. To take from property its chief element of value, and to deny to the citizen the right to use and transmit it in any proper and legitimate method, is as much depriving him of his property as if the property itself were taken.

In the case of Butcher's Union vs. Crescent City, Ill., U. S., 746, the Supreme Court dealt extensively with the question of what legislation properly came within the proper definition of police power, a term very broad and that has covered more sins than the mantle of charity. Justice Field said: "The common business and callings of life, the ordinary trades and pursuits which are inocuous within themselves and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The

patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of his most sacred property. It is a manifest encroachment both upon the just liberty of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the other from employing whom they think proper."

The fact that appellant is an alien corporation does not alter the case or make any different rule from what it would be if it were a domestic corporation.

Yick Wo vs. Hopkins, 118 U. S., 356.

The case just cited involved the constitutionality of an ordinance of the city and county of San Francisco, providing that it could be unlawful for any person to engage in the laundry business within the corporate limits without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone. This Act was passed under the guise of regulation for the purpose of preventing Chinamen from carrying on the laundry business in the city of San Francisco, though the Act on its face indicated no such purpose. The Supreme Court of the United States, in a well considered case, held the ordinance void, because it was within the prohibition of the Fourteenth Amendment to the Constitution of the United States.

This ordinance did not state that the privilege should be granted to citizens and withheld from Chinese; on its face it appeared to be simply a regulation of the business under the police power, and required, as a condition precedent to carrying on the business, a permit from the city commissioners. The ordinance was held

void as obnoxious to the constitutional provision above mentioned. Said the Supreme Court of the United States: "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constraind to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is of course not subject to law, for it is the author and the source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts, and the law is the definition and the limitation of power. It is, indeed quite true that there must always be lodged somewhere and in some person or somebody the authority of final decision, and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of public government, exercised either in the pressure of opinion or by means of the suffrage; but the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race, in securing to man the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts bill of rights, the government of the Commonwealth may be a government of laws and not of men, for the very idea that one man may be compelled to hold his life or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable, and in a country where freedom prevails as being the essence of slavery itself.

A statute prohibiting the manufacture or sale of food of any substitute for butter or cheese produced from pure, unadulterated cream of milk, is unconstitutional.

People vs. Marks, 52 Am. Rep., 34, a N. Y. case.

Counsel for defendant in error in the State Court relied with much confidence on the case of Holden vs. Hardy, 169 U. S., 366. After a careful examination of this case we see nothing in it in conflict with the insistence that the Tennessee statute is unconstitutional. The Utah statute passed on in the Holden case regulated the hours of laborers in underground mines, and was sustained as a valid exercise of the police power of the State. This Court, however, intimated that an Act regulating the hours of all labor to eight hours per day would have been unconstitutional. It is not within the power of the Legislature to prevent persons who are *sui juris* and otherwise perfectly competent to contract, from entering into employment, and voluntarily making contracts in relation thereto. The character of the work to be performed, the number of hours per day which the employee shall work, and the amount and kind of compensation to be paid therefor are purely and necessarily personal matters between the parties to the contract, and are regulated by the terms thereof and by the will of the employer, influenced by considerations as to the requirements of his business and the condition of the market for his products, and it is clear that so long as the employment does not interfere with the rights and health of others, the Legislature cannot prevent it or regulate any of its terms. There is no public necessity requiring that laborers shall receive their compensation in cash that can be the subject of the police power of the State. The Act in the case at bar does not pretend to regulate the public health or to regulate the public morals. It is simply

a wave of the populistic doctrines that have recently swept over the South and West, and while the Act is apparently fair on its face, and covers all classes of labor, it is manifest that the Act was aimed at industrial corporations that employ large bodies of men, and was not aimed at the farmer who pays his laborers in orders on the store.

So the California enactment in the *Yick Wo* case was fair on its face and made no discrimination against the Chinese and in favor of the white man, yet the Act was in fact a discrimination, and was held to be unconstitutional.

An enactment of the Legislature, made in pursuance of the police power of the State or a police regulation, must be for the purpose of enforcing a duty and to punish acts or omissions which may be right or wrong, according to the time, place and manner of doing them, that is the exercise of what would otherwise be right, at the time, place and manner, becomes an injury to the public, is prohibited.

"It is apparant that if the police power extends to matter affecting contract relations, and in which the public health or public morals is in no way concered, there is practically no limit to this exercise, and all business conducted in the States, whether of a quasi-public, public, or strictly private nature, could be made subject to such laws regulative thereof as the Legislatures of the respective States might see fit to adopt, and the personal liberties of citizens secured to him by the constitution of the United States would be entirely subverted."

"Among the privileges and immunities secured to the citizen by the 14th amendment is the right "to pursue unmolested a lawful employment in a lawful manner.'"

Incidental to this there is, of course, the further right to enter into contracts relating to the character of the service to be performed, the amount of compensation to be paid and received therefor, and the period of time or the number of hours per day required to perform such labor.

In the case of private employment of labor, employers are entitled to employ as many workmen, and of whatever degree of skill and at whatever price they think fit, and to pay them in such manner as they deem proper and the laborer is willing to accept, except possibly in some special cases, as children or orphans, and we know of no case that has gone to the extent of regulating the price that employers should pay for labor, or the manner of their payment, even though the law has gone to a large extent towards holding that the States have a right in certain cases of injurious employment to regulate the hours and methods of labor, and provisions for the safety of the laborer, but we know of no case holding that the laborer can not contract for the amount and kind of his compensation. Such an Act is paternal beyond any case we have yet seen.

We turn to some of the authorities supporting our present contention, from which it will be seen that, while the Courts do not attempt specifically and in detail to enumerate and define all these privileges and immunities, they are practically unanimous in holding that the right to pursue, in a lawful manner, a lawful vocation or trade, unmolested by laws in any way restrictive of that right, is a privilege that is protected and secured to the citizen by the Constitution of the United States.

Ward vs. Maryland, 79 U. S., 12 Wall., 430. (20: 453.)

Slaughter-House cases, 83 U. S., 16 Wall., 97. (21: 415.)

It is said in the dissenting opinion of Justice Field in the latter case: "The privileges and immunities designated are those which of right belong to the citizens of all free governments. Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons."

Butchers' Union S. H. & L. S. L. Co. vs. Crescent City L. S. L. & S. H. Co., 111 U. S. 746 (28:585); 1 Adam Smith, Wealth of Nations, Chapt. 10.

The right to follow any of the ordinary callings of life is one of the privileges of a citizen of the United States.

Ex parte Kuback, 85 Cal. 274, 9 L. R. A. 482.

A city cannot be justified in making it a misdemeanor for any of its citizens to contract with another for services to be rendered because the contract is that he shall work more than a limited number of hours per day.

Ex parte Kuback, 85 Cal. 274, 9 L. R. A. 482.

It is not competent for the legislature to single out the mining, manufacturing and smelting industries of the State and impose upon them restrictions with reference to the hours of their employment from which other employers of labor are exempt.

Re Eight Hour Bill, 21 Colo. 29.

The right of parties to make their own contracts is a right guaranteed by our Bill of Rights and protected by the 14th Amendment to the Constitution of the United States.

Low vs. Rees Printing Co., 41 Neb. 127, 24 L. R. A. 702.
Re House Bill, No. 203, 21 Colo. 27.
Frorer vs. People, 141 Ill., 171, 16 L. R. A. 492.

When the subject of contract is purely and ex-

clusively private, unaffected by any public interest or duty to person, society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.

Leep vs. St Louis, I. M. & S. R. Co. 58 Ark. 407, 446, 23. L. R. A. 621; Wally vs. Kennedy, 2 Yerg., 554, 24 Am. Dec., 511; Godcharles vs. Wigeman, 113 Pa., 431; Com. vs. Perry, 155 Mass., 117, 14 L. R. A,, 325; Re Jacobs, 98 N. Y., 98, 50. Am. Rep., 636; People vs. Marx, 99 N. Y., 377, 52 Am. Rep., 34: People vs. Gillson 109 N. Y., 389; Millett vs. People, 117, 111, 294, 57 Am. Rep., 869; Shaver vs. Pennsylvania Co., 71 Fed. Rep., 931, 936.

The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man of which he cannot be deprived under the guise of law, or otherwise, except by usurpation or force.

Re Tiburcio Parrott, 1 Fed. Rep., 481.

This statute is also violative of the provisions of the 14th Amendment that no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

What we have already said is sufficient to show that under the operation of the law all other persons in the state, no matter in what business or occupation they may be engaged, are left entirely at liberty to make whatever contracts they please in respect to the character of the work to be performed, the amount to be paid therefor, and the number of hours that shall constitute a day's work in all occupations which by the law of the land are properly the subject of contract.

The due process of law of which plaintiff claims to have been deprived is the arbitrary violation of the con-

tract made between the plaintiff in error and its laborers. And the arbitrary deprivation by the legislature of its right to make a valid contract with its laborers as to the kind of compensation to be received by them.

Blackstone, in his classification of fundamental rights, says: "The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land."

1 Bl. Com. 138.
Pumpelly vs. Green, Bay & M. Canal Co., 80 U. S., 13 Wall., 166, 177 (20: 557, 560.)
Wynehamer vs. People, 13 N. Y., 378, 398.

All laws, therefore, which impair or tramel these rights which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements, are infringments upon the fundamental rights of liberty, which are under constitutional protection.

People, Manhattan Sav. Inst. vs. Otis, 90 N. Y., 48.
Re Jacobs, 98 N. Y., 98, 50 Am. Rep., 636.
Bertholf vs. O'Riley, 74 N. Y., 509, 515, 30 Am. Rep., 323.
Low vs. Rees Printing Co., 41 Neb. 127, 24 L. R. A. 702.
Nichols vs. Walter, 37 Minn., 264.
State Randolph vs. Wood, 49 N. J., L. 88.
Ritchie vs. People, 155 Ill., 98, 29 L. R. A., 79.

The manner in which the law discriminates against one class of employers and employees and in favor of all others, places it in opposition to the guaranties hereinbefore discussed, and renders it invalid.

Ritchie vs. People, 155 Ill., 98, 29 L. R. A., 79.
Frorer vs. People, 141, Ill., 171, 16 L. R. A., 492.

The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract

and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C & D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract.

Frorer vs. People 141, Ill., 171, 16 L. R. A., 492.
Ramsey vs. People, 142 Ill., 380, 17 L. R. A., 853.
Braceville Coal Co. vs. People, 147 Ill., 66, 22, L. R. A., 340.
State vs. Loomis, 115 Mo., 307, 21 L. R. A., 789.
Austin vs. Murray, 16 Pick. 121.

"The law of the land" does not mean the Acts of Legislatures which deprive the citizen of his rights, privileges or property, but it means a valid Act, and the spirit of the constitution means that there must be some limitations on the part of the Legislature. Magna Charter relieved the British subject from the tyranny of the king, and remitted him to the despotism of parliament; the Constitution of the United States, under the 14th Amendment, relieves every person of the uncontrolled despotism of the Legislature.

The cause or occasion for depriving a citizen of his supposed rights must be found in the law as it is, or at least it can not be created by a legislative act which aims at their destruction, where the rights of property are admitted to exist, the Legislature cannot say they shall exist no longer, nor will it make any difference although a process and tribunal are appointed to execute the sentence. If this is the law of the land, and due process of law within the meaning of the constitution, then the Legislature is omnipotent. It may enter or assume entire possession, and take away liberty and life without a pre-existing cause, appointing judicial and executive agencies to execute its will, for property is placed by the constitution in the same catagory with liberty and life."

Wynehamer vs. The People, 13 N. Y., 378.

The power assumed by the Tennessee Legislature can only be justified by extending the term "police power" to include such a statute. We have been unable to find any precise definition of this term, and an understanding thereof can only be arrived at by a process of inclusion and exclusion. We find that statutes have been upheld on the ground that they were essential to the public safety, health and morals, ordering destruction of property that endangered the lives of passers by, and authorizing the demolition of such as are in the path of fires, prohibiting the slaughter of diseased cattle, or the sale of decayed and unwholesome food, the erection of wooden buildings, the regulation of railroads and means of public conveyance, the regulation of interments in burial grounds, the restriction of objectionable trades, forcible vaccination, the confinement of the insane or those afflicted with loathesome diseases, restriction of beggars, vagrants, and drunkards, suppression of obscene publications and houses of ill fame, the prohibition of gambling houses, the regulation of hours of labor by children, and in places where the labor was particularly unhealthy, all of which is justified by the public necessity and public welfare, but we know of no case that undertakes to make trades and contracts for people who are *sui juris*, and that undertakes to regulate the internal affairs of every employer of labor. Such a policy partakes of despotism and renders the State odious.

It may be that this particular Act is popular, but the principle involved in sustaining the same is the "rift within the lute" that will spread far beyond its original purpose, and place every industrial institution at the mercy of the Legislature.

The comity existing between Courts and Legislatures requires parliamentary language, and the Legis-

lature is presumed to act honestly and from proper motives, neverthless it is well known that members of State Legislatures are frequently illy qualified to perform their duties, and great injustice is often attempted to be done the industries of the country by legislators who are either swept away by popular sentiment or by motives that are not creditable, and it often happens that the only refuge is this Court and the 14th amendment.

We insist that the plaintiff in error has the right, if it desires, to sell its goods for labor, and the laborer has the right to sell his labor for merchandise. It is going a long distance from the basis line of our institutions to hold that a contract not unlawful, not immoral, concerning no public purpose, cannot be made between two parties who are *sui juris* and in the full possession of their faculties. If this act can be sustained, one can be sustained to the effect that the laborer shall be paid only in cash at the end of each day's employment, that they shall only work so many hours per day, and not only this, but the inevitable outgrowth will be an attempt to regulate their wages and compensation.

The record shows that the plaintiff in error is a foreign corporation, that it has complied with all the legal regulations of Tennessee authorizing it to have a domicile and do business in Tennessee, and it is a person that is entitled to the equal protection of the law. A law may be equal and yet arbitrary and grossly unjust. A law prescribing that no class of workmen should work more than a fixed number of hours per day, and demand more than a fixed compensation, would be equal, yet such a law would deprive these persons of a certain form of liberty, and of the freedom of contract. If this is true, why is it not true that a statute which says that an employer shall pay in cash his laborers

when the laborer has agreed and contracted to take merchandise not equally unconstitutional.

The right of personal security, the right of personal liberty, and the right to protect property, are three fundamental rights of all persons in the United States. Says Mr. Justice Swayne: "Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is every thing which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property."

16 Wall, 127.

The police power only extends to the necessary regulations of the pursuits of man, so that they shall not become in their mode of exercise, unhealthy, noisome, dangerous or otherwise detrimental or injurious to the common interests of the community. It cannot be carried to the extent that some change in dealing may be more profitable, or better calculated to enhance the wealth of the community, and is therefore valid. It cannot be insisted that the use of this punch-out is detrimental or injurious to the common interests of the people of Tennessee, and it makes no difference whether its abolition is beneficial or injurious. It does not come within the definition of the police power.

There are some rights, in every free government, beyond the constitution of the State.

"A government which recognized no such rights, which held the lives, the liberty and property of its

citizens subject at all times to the absolute despotism and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

The theory of our government, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name No Court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

Savings & Loan Assn. vs. Popeka, 20 Wall, 461.

With these remarks we submit these matters to the determination of this Court.

Respectfully submitted,

FREDERICK LEE MANSFIELD,

Attorney.